

UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO SENTENCING MINUTE SHEET													
CR No: 18-2429 WJ				USA vs.: Benally									
Date: November 20, 2019				Name of Deft: Darren Benally									
Before the Honorable: Chief District Judge William P. Johnson													
Time In/Out:		10:28am – 11:53am 1:17pm – 1:50pm 2:33pm - 2:49pm				Total Time in Court (for JS10):				2 hours 14 minutes			
Clerk:		R. Garcia				Court Reporter:				M. Loughran			
AUSA:		Raquel Ruiz-Velez				Defendant's Counsel:				Amy Sirignano			
Sentencing in:		Albuquerque, NM				Interpreter:				Esther Yazzie			
Probation Officer:		Jason Hunt and Shaun Ward				Interpreter Sworn?				<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No	
Convicted on:		<input checked="" type="checkbox"/> Plea	<input type="checkbox"/> Verdict	As to:		<input checked="" type="checkbox"/> Information	<input type="checkbox"/> Indictment						
If Plea:		<input checked="" type="checkbox"/> Accepted	<input type="checkbox"/> Not Accepted	Adjudged/Found Guilty on Counts:									
If Plea Agreement:		<input checked="" type="checkbox"/> Accepted	<input type="checkbox"/> Not Accepted	<input type="checkbox"/> No Plea Agreement		Comments:							
Date of Plea/Verdict:		7/22/2019		PSR:		<input type="checkbox"/> Not Disputed	<input checked="" type="checkbox"/> Disputed	<input checked="" type="checkbox"/> Courts adopts PSR Findings					
Evidentiary Hrg:		<input checked="" type="checkbox"/> Not Needed	<input type="checkbox"/> Needed	Exceptions to PSR:									
SENTENCE IMPOSED				Imprisonment (BOP):		30 months							
Supervised Release:		3 years						Probation:					
REC	500-Hour Drug Program			BOP Sex Offender Program			Other:						
ICE	Court recommends ICE begin removal proceedings immediately or during service of sentence									ICE not applicable			
SPECIAL CONDITIONS OF SUPERVISION													
No re-entry without legal authorization				Home confinement for _____ months _____ days									
Comply with ICE laws and regulation				Community service for _____ months _____ days									
<input checked="" type="checkbox"/>	Participate in an initial substance abuse testing; if negative, per paragraph 63 of PSR, no substance abuse treatment will be required.			Reside halfway house _____ months _____ days									
Participate in/successfully complete mental health program				Register as sex offender									
Refrain from use/possession of alcohol/intoxicants				Participate in sex offender treatment program									
<input checked="" type="checkbox"/>	Submit to search of person/property			Possess no sexual material									
<input checked="" type="checkbox"/>	No contact with victim(s) family members; does not apply to Defendant's family.			No computer with access to online services									
No entering or loitering near victim's residence				No contact with children under 18 years									
Provide financial information				No volunteering where children supervised									
Grant limited waiver of confidentiality				Restricted from occupation with access to children									
Refrain from use and possession of synthetic cannabinoids, etc.				No loitering within 100 feet of school yards									
No possession of a firearm, ammunition, destructive device or any other dangerous weapon				Participate in an educational or vocational program approved by the Probation Officer									
1. Deft must participate in and successfully complete a community-based program which provides education and training in anger management OTHER: 2. Deft must complete 80 hours of community service during your term of supervised release													
Fine: \$		0.00 (community service imposed)				Restitution: \$		2,535.42; \$477.50 to CVRC; \$2,057.92 to C.T. Restitution is to be paid in full, or monthly installments of \$100 or 10% of the defendant's monthly income, whichever is greater. The Court waives any interest on the restitution amount.					
SPA: \$		100.00				Payment Schedule:		<input checked="" type="checkbox"/>	Due Immediately		<input type="checkbox"/> Waived		

OTHER:			
	Advised of Right to Appeal	X	Waived Appeal Rights per Plea Agreement
X	Held in Custody		Voluntary Surrender
X	Recommended place(s) of incarceration: FCI Tucson, AZ.		
	Dismissed Counts:		
<p>Ms. Sirignano advises PSR reviewed with client. The Court asks if the parties will have witness allocation or testimony. Mr. Ruiz advises she will have one to allocate. Ms. Sirignano advises she would like to have witness Dino Benally present testimony that will go to her client's objections; explains Dino Benally will provide both testimony and victim allocation. Ms. Ruiz would object to victim allocation by Dino Benally. The Court has no objection re testimony re vulnerable victim objection; but not for victim allocation. Ms. Sirignano responds. The Court will allow it; but, will see what weight to give it. Ms. Ruiz replies; clarifies that the family designated Tanisha Tyler as the family spokesperson; Mr. Ruiz cites the statute re victim allocation. The Court questions Ms. Ruiz re family spokesperson. The Court questions Ms. Sirignano re relation of Dino Benally to victim. The Court asks Mr. Ruiz to make argument why Dino Benally does not have standing to allocate. Ms. Ruiz responds; notes the family has chosen their spokesperson Tanisha Tyler. Ms. Sirignano responds why the Court should overrule the Government's objection. The Court will sustain the Government's objection and will only allow testimony by Dino Benally as to vulnerable victim enhancement. Ms. Tanisha Tyler presents victim allocation to the Court. The Court will take up Ms. Sirignano's other objections from Doc. 236. The Court hears argument from counsel re objections to PSR: Objection Page One re who is counsel of record – Court notes change made in Probation's addendum. Objection to paragraphs 1 – 7 – Court overrules Objection to paragraphs 9 through 20 – Court overrules Objection re restitution (amount for T-Shirts), no objection to CVRC amount – Court reserve ruling. Objection to Base OL level computation based on criminally negligent conduct; Court overrules objection. Objection to paragraph 38 re denial of third point for acceptance of responsibility – Court takes under advisement. Mr. Ruiz argues in support of the Government's objection to the PSR; argues that the vulnerable victim enhancement should be applied; offers Exhibits 1 (Medical Report Bates #618) and 2 (NCIC Report Bates #169, 170, 171, 172, 173); without objection, the Court admits Exhibits 1 and 2. Court breaks for lunch. Court back in session. Ms. Sirignano responds in opposition to the Government's objection/request for application of vulnerable victim enhancement. Ms. Ruiz replies. The Court returns to Ms. Sirignano's objection re third point for acceptance of responsibility; cites 6th Circuit case law USA v. Capozzi; Court overrules Defendant's objection and finds the 2 points for acceptance of responsibility was properly applied. The Court inquires re counsels' calculation of guidelines with and without vulnerable victim enhancement; with application of vulnerable victim enhancement, Ms. Ruiz believes OL should be 18, CHC I, resulting in a sentencing range of 27 to 33 months; without application of the vulnerable victim enhancement, Ms. Sirignano believes OL should be 16, CHC I, resulting in a sentencing range of 21 to 27 months.</p>			
OTHER COMMENTS: Mr. Ruiz requests a sentence at the high end of what the Court determines the final guideline			

sentencing range to be; requests a supervision term of 3 years; concurs with restitution amount of \$2,535.42, and \$100 SPA.

Defendant addresses the Court.

Ms. Sirignano addresses the Court; notes for the record, her objection to the Court ruling re denial of application of the third point for acceptance of responsibility; argues for sentence at the low end of what counsel believes should be a guideline range of 21 to 27 months.

The Court will take a short to consider its ruling and sentence in this matter.

Court back in session.

The Court reviews Defendant's history and characteristics re anger issues.

The Court cites 10th Circuit case of USA v. Talk; sustains the Government's objection and finds the vulnerable victim enhancement is applicable; finds OL to be 18, CHC I, sentencing range of 27 to 33 months.

With regard to the T-Shirts for the funeral, the Court finds them to be a reasonable expense for inclusion in total funeral restitution amount.